IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

Ladu & Others Vs. Board of Revenue for Rajasthan Ajmer & Others
(SB Civil Writ Petition No.6077/1994)

SB Civil Writ Petition under Article
226 & 227 of the Constitution of India.

Date of order: October 05, 2006.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Kamlakar Sharma] for the petitioner.
Mr. Gyaneshwar Bardhar]

Mr. R.P.Kuldeep, Addl.Govt. Advocate for State.
Mr. Bharat Yadav, for respondents.

BY THE COURT:

The defendant petitioners, legal representatives of deceased defendant Phoolya (for short `defendant') seek to quash the judgment dated August 12, 1994 of the Board of Revenue (for short `Board') and make prayer to dismiss the suit for possession instituted by the plaintiff respondent No.4 Barji (for short `plaintiff').

2. Contextual facts depict that on November 29, 1962 plaintiff filed a suit against the defendant for possession by way of redemption of mortgage of the lands comprising of khasra Nos.345, 346, 347 and 351 of Gairmumkin Bara and khasra Nos.352, 353, 354, 356, 443, 445 and 402/2 measuring 14 bighas 6 biswas situated at village Khahada khurd. As per averments made in the plaint the disputed lands were mortgaged by the father of plaintiff to the father of defendant on Chait Budi Amavasya

Svt.1976 in consideration of Rs.602/-. The mortgage deed was executed on a stamp paper of Rs.2/- and was handed over to father of defendant.

3. The defendant filed the written statement denying the averments made in the plaint. According to defendant the plaintiff was not the daughter of deceased Ramnath and the story of mortgage was absolutely false. The suit was barred by limitation. In the alternative it was prayed that in case the story of mortgage was accepted the mortgage deed being insufficiently stamped and unregistered was inadmissible in evidence. It was also pleaded that the defendant acquired title by adverse possession and the suit deserves to be dismissed. On the basis of the pleadings of the parties the trial court framed as many as seven issues and after having considered ocular and documentary evidence decreed the suit on September 28, 1964.

4. The Revenue Appellate Authority on appeal framed two additional issues and while keeping the appeal pending, sent the issues to trial court for decision. The trial gave finding only on one issue and in regard to other issue it was held that the court had no jurisdiction to decide it. Thereafter the Revenue Appellate Authority accepted the appeal vide judgment dated October 17, 1987 and remanded the case to trial court to consider the question of limitation afresh.

5. The plaintiff filed second appeal before the Board without impleading legal representatives of defendant Phoolya who had already died and this fact was in the knowledge of plaintiff. The defendants also filed cross objections with the prayer to dismiss the appeal on the ground that it was filed against the dead person. The Board accepted the appeal and dismissed the cross objections vide judgment dated August 12, 1994 and decreed the suit. Against this judgment of Board that the instant petition has

been filed by the defendant.

6. Learned counsel for the defendant contended that the appeal against dead person is a nullity and no effective order could have been passed. There was no evidence on record to prove the existence pf transaction of mortgage. The document of mortgage was not registered. When the original document itself was inadmissible in evidence, no secondary evidence could have been allowed to prove the transaction of mortgage. Even the permission for production of secondary evidence was not sought. According to learned counsel the Board erroneously treated the mortgage a transaction under the Jaipur Tenancy Act. Under the provisions of section 16 of Jaipur Tenancy Act the interest of khatedar tenant was heritable but not transferable. As per section 11 of Jaipur Tenancy Act the right of mortgage had been given to a Pattedar tenant only. Such mortgage was governed by sections 12, 13, 14 and 15 of Jaipur Tenancy Act. Provisions of Jaipur Tenancy Act were applicable only to those mortgages which were created after coming into force of Jaipur Tenancy Act and no provision of limitation for redemption of such mortgage had been made. As per section 15 of Jaipur Tenancy Act right of redemption was given to mortgagor only within a period of 30 years, but no steps were taken for redemption of mortgage by the plaintiff and the suit was filed in the year 1962. The plaintiff was not entitled to file the suit since Ramnath died in Svt.2008 (year 1951) and as per section 17 of Jaipur tenancy Act only male lenial descendant could inherit the interest of khatedar tenant and plaintiff was not unmarried daughter of Ramnath at the time of his death.

7. Learned counsel for the plaintiff on the other hand canvassed that the defendants have not disclosed full facts. It was also stated that on the

grounds stated in the writ petition, the defendants filed review petition which was withdrawn after seeking interim order in the writ petition. Since the defendants were trespassers, they could not have acquired legal right against the plaintiff who had undisputed khatedari rights.

8. I have pondered over the submissions and scanned the material on record.

9. The defendants annexed with the writ petition, a copy of cross objections filed by them before the Board (Annexure-7), wherein it was specifically stated that since the appeal was filed against dead person it was not maintainable. The plaintiff did not controvert this fact. Having analysed the impugned judgment of Board, I notice that the said cross objection was not at all considered by the Board. I am satisfied that the second appeal was filed by the plaintiff against defendant Phoolya, who had died prior to filing of the appeal. Since appeal was filed against a dead person, it was not maintainable and no effective order could have been passed by the Board. Without entering into other contentions raised, I hold that the impugned judgment of Board is illegal.

10. Resultantly, this writ petition is allowed and judgment dated August 12, 1994 of the Board of Revenue is set aside. There shall be no order as to costs.

(Shiv Kumar Sharma)J.

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